IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

NOTICE OF MOTION NO.3686 OF 2004
IN
CUSTOMS APPLICATION (L) NO.18 OF 2004

Commissioner of Customs
(Preventive), Mumbai .. Applicant.

Versus

Lajwani D. Datwani & Ors. .. Respondents.

Ms.S.V. Bharucha for the applicant.

Mr.Anil Balani with Mr.Jerry Lewis for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 15TH NOVEMBER, 2006.

P.C. :

1. Heard Ms.Bharucha in support of this notice of motion. Mr.Balani appears for the respondents.

2. The motion seeks condonation of delay of 781 days in filing the application under Section 138 of the Customs Act, 1962. In the explanation sought to be given in supporting affidavit, it is accepted that the certified copy was received in the office of the applicant on 1st May, 2002. The impugned judgment and order is dated 26th April, 2002. That being so, nothing prevented the applicants from taking necessary steps immediately. The reason given is that the copy was marked to some wrong section and that is why

filing of application got delayed. It is just not possible to accept this explanation. This shows complete lack of interest amongst the officers. If the copy was received by some wrong section, it was the responsibility of that section to send the copy to correct section.

3. From the impugned order it is seen that the respondents were represented by their departmental representative at the time of hearing. Surely correct section ought to have taken necessary steps to obtain the certified copy. Section 138 provides 180 days for filing application. Over and above that delay of 781 days is sought to be condoned. It is not possible to condone such delay.

4. Even on merits it is seen that the Tribunal had set aside the confiscation of the articles concerned. We are told that the articles have already been sold by the department and the sale proceeds have been given to the respondents. That being so, even otherwise also there is no reason to interfere.

5. The notice of motion is rejected. Consequently, the customs application also stands dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)